

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS POWER,

CIVIL DIVISION

Plaintiff,

Docket No.: 2:17-CV-00154-MRH

vs.

Hon. Mark R. Hornak

HEWLETT-PACKARD COMPANY,

Defendant.

PLAINTIFF'S PRETRIAL STATEMENT

Plaintiff, Thomas Power, by and through his attorneys, Peter D. Friday, Esquire, Madeline T. Stuchell, Esquire, J. Patrick Denton, Esquire, and Friday & Cox LLC, files the following pretrial statement in accordance with the Court's pretrial order, LCvR 16.1.C, and F.R.C.P. 26(a)(3):

I. NARRATIVE STATEMENT

Plaintiff purchased a used HP Elitebook laptop on eBay.com on April 29, 2013. The laptop did not come with product documentation. The laptop arrived with a battery pack manufactured by a third-party manufacturer rather than an original battery pack. The original battery pack that would have been provided with the laptop upon first sale had an affixed statement reading "Replace with HP Spares." At the time, product documentation for the Elitebook was available to the public on HP.com. That documentation included a warning that stated, "WARNING! To reduce potential safety issues, use only the battery provided with the computer, a replacement battery provided by HP, or a compatible battery purchased from HP."

Between April 2013 and June 2015, plaintiff used the computer regularly. During that time, no warning appeared on the laptop itself, nor did plaintiff receive any on-screen error message concerning the laptop's battery or a warning concerning any other issue.

On June 20, 2015 at approximately 1:00 am, plaintiff was using the Elitebook while at a 24-hour gym with the computer balanced directly on his lap. After using the computer for approximately 20-60 minutes, the laptop exploded into flame, burning plaintiff's legs. He sustained serious injuries, including burns requiring a skin graft, hydrotherapy, catheterization, and intravenous antibiotics, cellulitis, and acute renal failure. After the incident, plaintiff began to experience urinary and bowel incontinence.

Plaintiff will prove at trial, *inter alia*, that Defendant failed to adequately warn its end-users, including plaintiff, of the increased risks of danger, specifically of fire and explosion, resulting from the use of third-party manufactured batteries, thus rendering Defendant's product unreasonably dangerous and defective, that this defect foreseeably caused plaintiff's injuries, and that plaintiff suffered both economic and non-economic damages as a result.

II. STATEMENT OF DAMAGES

A. Economic Damages:

1. Lien - Medicare is currently asserting a \$14,348.86 lien for medical reimbursement;
2. Total out of pocket amounts paid for medical care: undetermined – will supplement
3. Medical expenses: undetermined – will supplement
5. Out of pocket medical expenses: undetermined – will supplement

B. Noneconomic Damages:

Plaintiff has suffered and/or will continue to suffer:

1. Pain;
2. Suffering;
3. Scarring and disfigurement;
4. Inconvenience;

5. Embarrassment and humiliation;
6. Loss of enjoyment of life;
7. Mental anguish;
8. Diminishment of his vitality;
9. Emotional and psychological trauma.

III. WITNESSES

A. Witnesses Plaintiff Expects To Call:

1. Thomas Power
c/o Friday & Cox LLC
1405 McFarland Road
Pittsburgh, PA 15216
(412) 561-4290
(liability and damages)
2. Kenneth W. Kutchek, P.E.
c/o Friday & Cox LLC
1405 McFarland Road
Pittsburgh, PA 15216
(412) 561-4290
(expert)(liability)
3. William F. Kitzes, J.D.
c/o Friday & Cox LLC
1405 McFarland Road
Pittsburgh, PA 15216
(412) 561-4290
(expert)(liability)
4. Michael S. Drew, M.D. F.A.C.S.
c/o Friday & Cox LLC
1405 McFarland Road
Pittsburgh, PA 15216
(412) 561-4290
(expert)(causation and damages)(may testify by video deposition)
5. Jenny Ziembicki, M.D.
UPMC Mercy Hospital
1515 Locust Street, Suite 236
(412) 232-8375

(causation and damages) (may testify by video deposition)

6. Cheryl Bernstein, M.D.
UPMC Pain Management at Centre Commons
5750 Centre Avenue, Suite 400
Pittsburgh, PA 15206
(412) 665-8030
(causation and damages) (may testify by video deposition)
7. Manisha Trivedi M.D.
City of Hope
Duarte Cancer Center
1500 East Duarte Road
Duarte, CA 91010
(626) 613-6348
(causation and damages) (may testify by video deposition)
8. Paul Dafe Ogagan, M.D.
UPMC McKeesport Painter Building
500 Hospital Drive, Suite 8, 3rd Floor
McKeesport, PA 15132
Tele: (412) 664-3392
(causation and damages) (may testify by video deposition)
9. John McCurry, Paramedic
Ross/West View EMSA
5235 Perrysville Avenue
Pittsburgh, PA 15229-2100
Tele: (412) 931-8200
(causation and damages)

B. Witnesses Plaintiff May Call

10. Maureen Lawlor, M.D.
5 Winterberry Ln.,
Sewickley, PA 15143
Tele: (412) 400-0476
(causation and damages) (may testify by video deposition)
11. Duane Eisaman, M.D. PhD.
UPMC Mercy Emergency Department
1400 Locust Street
Pittsburgh, PA 15219
(412) 631-5914
(causation and damages) (may testify by video deposition)

12. David Weinbaum M.D.
Infectious Disease Associates of Western PA-UPMC
532 South Aiken Avenue, Suite 201
Pittsburgh, PA 15232
(412) 681-0966
(causation and damages) (may testify by video deposition)
13. Alain Corcos, M.D. F.A.C.S.
UPMC Mercy
1515 Locust Street, Suite 236
Pittsburgh, PA 15219
(412) 232-7681
(causation and damages) (may testify by video deposition)
14. Kristina Curci, M.D.
UPMC Mercy Behavioral Health Unit
1400 Locust Street, Unit 8A,
Pittsburgh, PA 15219
(412) 232-8300
(causation and damages) (may testify by video deposition)
15. Christi Dhayanandhan, M.D.
Cleveland Clinic Lakewood Family Health Center
14601 Detroit Ave.
Lakewood, OH 44107
(216) 237-5500
(causation and damages) (may testify by video deposition)
16. Robert Louis Volosky, M.D.
Infectious Disease Associates of Western PA-UPMC
532 South Aiken Avenue, Suite 201
Pittsburgh, PA 15232
(412) 681-0966
(causation and damages) (may testify by video deposition)
17. Justin Barry, PA-C
UPMC Mercy
1400 Locust Street, Suite 6530
Pittsburgh, PA 15219
(412) 232-7786
(causation and damages)
18. Garth Elias, M.D.
General Surgery, UPMC Mercy
1515 Locust Street, Suite 236
Pittsburgh, PA 15219

(412) 232-7681

(causation and damages) (may testify by video deposition)

19. Records Custodian
Gateway Medical Group-UPMC
1100 Washington Avenue, Suite 115
Carnegie, PA 15106
(412) 279-8940
(causation and damages)
20. Records Custodian
UPMC Mercy Hospital
1400 Locust Street
Pittsburgh, PA 15219
(412) 802-0100
(causation and damages)
21. Records Custodian
Pittsburgh Kidney Care
LKA: 1401 Forbes Avenue, Suite 350
Pittsburgh, PA 15219
LK #: (412) 621-3631
(causation and damages)
22. Records Custodian
Ross West View Emergency Medical Services
5325 Perry Highway
Pittsburgh, PA 15229
(412) 931-8200
(causation and damages)
23. Records Custodian – UPMC – Urology McKeesport
UPMC McKeesport Painter Building
500 Hospital Drive, Suite 8, 3rd Floor
McKeesport, PA 15132
Tele: (412) 664-3392
(causation and damages)
24. Custodians of Records for any person or entity providing documents in this case.
The custodians of records for any records produced in this case may be called to
lay foundation for the records produced and may testify about the content of those
records.
25. Plaintiff may call as a witness any person identified in the case or disclosed by
defendant.

26. Plaintiff may call as a witness any person necessary to present rebuttal or impeachment testimony.
27. Plaintiff may call any person identified as a witness in defendant's pretrial statements.

IV. EXHIBITS

A. Exhibits Plaintiff Intends to Offer:

NO.	DESCRIPTION
1.	Club Julian security system video
2.	Subject HP 8730W laptop notebook
3.	Subject battery pack
4.	Subject exploded battery cell
5.	Subject unexploded battery cells
6.	Subject battery debris
7.	Subject battery charger
8.	Fire Marshal report
9.	Ross West View Emergency Medical Services medical records
10.	Ross West View Emergency Medical Services billing records
11.	UPMC Mercy Hospital admission and discharge reports and summaries
12.	UPMC Mercy Hospital operative reports
13.	UPMC Mercy Hospital progress reports
14.	UPMC Mercy Hospital flow charts
15.	UPMC Mercy Hospital burn diagrams
16.	UPMC Mercy Hospital photographs of injuries, operations, and treatments
17.	Any and all other UPMC Mercy Hospital medical records

18.	UPMC Mercy Hospital billing records
19.	Photographs depicting daily treatment of injuries
20.	Photographs depicting skin graft site
21.	Photographs depicting graft harvest site
22.	Photographs depicting injuries healing over 6 months from date of incident
23.	Photographs from hospital depicting incontinence and catheter
24.	Photographs depicting initial bandages over injuries
25.	Photographs depicting initial injuries
26.	Photographs depicting nighttime incontinence
27.	Photographs depicting pre-graft infection
28.	Photographs depicting leg swelling
29.	Gateway Medical Group medical records
30.	Gateway Medical Group billing records
31.	UPMC – Urology McKeesport medical records
32.	UPMC – Urology McKeesport billing records
33.	Three Rivers Nephrology & Hypertension Assoc., LLC/Pittsburgh Kidney Care medical records
34.	Three Rivers Nephrology & Hypertension Assoc., LLC/Pittsburgh Kidney Care billing records
35.	Medicare Lien Statement
36.	Medicare Lien Itemized Statement
37.	Any and all out-of-pocket medical bills, statements, and receipts
38.	Exemplar battery charger

39.	Exemplar battery pack
40.	Exemplar battery cells
41.	Exemplar laptop notebook
42.	Photographs of Windows Vista product label
43.	Photographs of subject notebook serial numbers
44.	Photographs of computer dated 08/24/2016
45.	Video from 06/07/2017 examination by defense expert
46.	Photographs from 06/07/2017 examination by defense expert
47.	Battery Testing Video 1 – from 01/03/2018 testing
48.	Battery Testing Video 2 – from 01/03/2018 testing
49.	Photographs from 01/03/2018 testing
50.	01/03/2018 Testing Results spreadsheet
51.	X-ray results of notebook and components from May 23, 2019.
52.	CT scan results of notebook and components from approximately September 30, 2019
53.	Photographs of computer and components taken by K. Kutchek on 12/19/2019
54.	HP Notebook PCs - 601 or 60X Error Displays on a Black Screen report
55.	eBay Sales receipt
56.	PayPal receipt

B. Exhibits Plaintiff May Offer If Need Arises:

NO.	DESCRIPTION
1.	Transcript of John Wozniak deposition and any and all deposition exhibits

2.	Transcript of David Piphio deposition and any and all deposition exhibits
3.	Transcript of Thomas Power deposition and any and all deposition exhibits
4.	Transcript of Michael Drew deposition and any and all deposition exhibits
5.	Transcript of William Kitzes deposition and any and all deposition exhibits
6.	Transcript of Kenneth Kutchek deposition and any and all deposition exhibits
7	Expert Report of Donald Galler dated December 24, 2020
8	Any and all documents relied upon by Donald Galler in making his report
9	CV of Donald Galler; compensation statement; testimony history
10	Expert Report of Quinn Horn dated December 30, 2020
11	Any and all documents relied upon by Quinn Horn in making his report
12	CV of Quinn Horn; compensation statement; testimony history
13	Expert Report of Michael S. Drew dated October 27, 2020
14	Any and all documents relied upon by Michael Drew in making his report
15	CV of Michael S. Drew; compensation statement; testimony history
16	Expert Report of Kenneth J. Kutchek dated March 16, 2020 with compensation statement and attachments
17	Any and all documents relied upon by Kenneth Kutchek in making his report
18	CV of Kenneth J. Kutchek; testimony history
19	Expert Report of William F. Kitzes dated October 29, 2020.
20	Any and all documents relied upon by William Kitzes in making his report
21	CV of William F. Kitzes; statement of compensation; testimony history
22	Plaintiff's Complaint
23	Defendant Responses to Interrogatories

24	Defendant Initial Disclosure documents
25	Defendant Responses to First Request for Production with attached documents
26	Defendant Responses to Second Request for Production with attached documents
27	Affidavit of Wesley Dale dated May 22, 2023 with exhibits
28	Expert Report of Herman Bagga, M.D.
29	UPMC Mercy Hospital medication administration records
30	UPMC Mercy Hospital laboratory records
31.	Any pleadings or portions thereof by plaintiff or defendant in this case.
32.	Any textbooks, notes, articles, summaries, reports, tables, data or other documents used, relied upon, or testified from by plaintiff's or defendant's experts at trial.
33.	Any exhibit, which subsequently becomes known, and information with regard to which is disclosed to defendants in a reasonable time before trial
34.	Visual aids used to explain and highlight testimony at trial.
35.	Medical diagrams and/or demonstrative exhibits to be used during any physician's testimony
36.	Demonstrative exhibits summarizing the treatment of plaintiff and the medical expenses and/or damages
37.	Anatomical charts and/or models
38.	Any statement obtained from any person called as a witness.
39.	Any exhibit necessary for impeachment or rebuttal purposes
40.	Any exhibit identified in defendant's pretrial statement(s)

V. Legal Issues To Be Addressed at Final Pretrial Conference

None presently.

VI. Expert Disclosures

Plaintiff has attached his Expert Disclosures as follows:

1. Kenneth Kutchek disclosures as Exhibit 1;
2. William Kitzes disclosures as Exhibit 2;
3. Michael Drew disclosures as Exhibit 3.

VII. Physician Report


Plaintiff has attached the expert report of Michael Drew as Exhibit 3.

VIII. Reservation To Amend And/Or Supplement

Plaintiff reserves the right to file a Supplemental Pretrial Statement for purposes of supplementing and/or amending this Pretrial Statement, as needed, as well as reserves the right to present impeachment or rebuttal testimony.

Respectfully submitted,

FRIDAY & COX, LLC

By: 

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 31, 2024 that a copy of the foregoing *Plaintiff's Pretrial Statement* was served upon the following via the Court's CM/ECF system:

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